

Mandated Reporter Commission

October 15, 2020

Definition of Child Abuse and Neglect as it Relates to 51A

Focus on Definition Standardization, Non-Caretakers, and DA Referrals

Current Text:

MGL c. 119 § 51A(a): A mandated reporter who, in his professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse; (ii) neglect, including malnutrition; (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect; or (iv) being a sexually exploited child; or (v) being a human trafficking victim as defined by section 20M of chapter 233.

110 CMR 2.00 (in part) definition of **caretaker**:

Caretaker means a child's:

- (a) parent
- (b) stepparent
- (c) guardian
- (d) any household member entrusted with the responsibility for a child's health or welfare
- (e) any other person entrusted with the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting (including babysitting), a foster home, a group care facility, or any other comparable setting. As such "caretaker" includes (but is not limited to) school teachers, babysitters, school bus drivers, camp counselors, etc. The "caretaker" definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is him/herself a child (i.e. a babysitter under 18 years of age).

Standardization Across Agencies

[Proposals to revise the definition of child abuse and neglect to ensure a standard definition among state agencies](#)

The OCA is not aware of any explicit definitions of abuse and neglect that differ from the DCF definition or formulation. However, other agencies run parallel investigations of abuse and neglect in order to 1.) determine whether there are licensing violations or concerns and/or 2.) to capture, investigate, and respond to incidents that may be unsupported by DCF or screened-out

by DCF (due to the nature of the allegations or determination that the perpetrator is a non-caretaker). Some agencies have MOUs with DCF which determine how the agencies will coordinate investigations if both agencies will be investigation one incident or series of incidents.

- 1.) What complications arise when two agencies (or more) investigate one incident or series of incidents?
 - a. What complications arise when an individual provider conducts its own internal investigation in addition to the agency level investigations?
- 2.) What complications arise when the two (or more) investigations reach conflicting conclusions?
- 3.) Do inter-agency MOUs resolve these complications? Could they resolve these complications? Would it be valuable to dictate that MOUs are necessary?
- 4.) What, if any, complications exist in the monitoring of, and response to, a concern that there was a failure to file a 51A? This can be determined as part of a licensing violation or a determination or notation by DCF, and has consequences in the penalties section of the statute.
 - a. "...whoever violates [51A] shall be punished by a fine of not more than \$1,000."
 - b. "Any mandated reporter who has knowledge of child abuse or neglect that resulted in serious bodily injury to or death of a child and willfully fails to report such abuse or neglect shall be punished by a fine of up to \$5,000 or imprisonment...not more than 2 ½ years or both...upon a guilty finding or a continuance without a finding, the court shall notify any appropriate professional licensing authority of the mandated reporter's violation of this paragraph."

DESE does not have their own agency definition of child abuse and neglect. DESE regulations for program and safety standards for approved public or private day and residential special education schools prohibit any student being "...subjected to abuse or neglect, cruel, unusual, severe or corporal punishment..." (603 CMR 18.05(5)(e)).

- EEC references child abuse and neglect in MGL c. 15D § 9(c)
 - o "The department shall promptly investigate and evaluate any notice transmitted to the department by [DCF] under subsection (l) of section 51B of chapter 119. Such investigation and evaluation shall determine whether the facility being operated by a person subject to licensure or approval under this section is being operated in compliance with this chapter and within the rules and regulations established under this chapter. If, during the course of any such investigation

or licensing study conducted by the department, any agent or employee of the department receives or discovers information concerning the occurrence of child abuse or neglect, such agent or that employee shall make a report to [DCF under section 51A].”

- EEC regulations require that residential programs serving children and teen parents develop and follow procedures for conducting internal investigations within the program. Such procedures are to be used for suspected incidents of child abuse or neglect, “**including but not limited to incidents** within the program reported to [DCF] pursuant to ...51A and shall be implemented upon request of the Department for any serious incident involving the health or safety of residents within the program” (emphasis added 606 CMR 3.04(3)(e)).
- EEC regulations for childcare programs include the following:
 - o “Educators are responsible for abuse and neglect if:
 1. the educator admits to causing the abuse or neglect,
 2. the educator is convicted of the abuse or neglect in a criminal proceeding, or
 3. **the [EEC] determines, based upon its own investigation or an investigation conducted by the Department of Children and Families** subsequent to a report filed under...51A and 51B, that there is reasonable cause to believe that the educator or any other person caused the abuse or neglect while the children were in care” (emphasis added 606 CMR 7.11(4)(c)).

- DMH regulations relating to the licensing and operational standards for mental health facilities includes that the facility shall notify DMH immediately, and in writing within one business day, of “any alleged abuse or neglect, or sexual or serious physical assault, which occurs between or among patients at the facility, or which occurs between or among patients and staff regardless of location, including any incident which is reported to another agency or law enforcement including, but not limited to:...51A...” (104 CMR 27.03(23)(h)(4)).
- DMH regulations create a reporting and investigation process (human rights investigation) for complaints regarding any “...incident or condition involving a client which he or she believes to be dangerous, illegal, or inhumane” (104 CMR 32.04(1)). There is a provision within this investigation process that indicates that the director of the program may “...defer an investigation to the Department of Children and Families, in which case he or she shall notify the Office of investigations” (104 CMR 32.04(6)(a)(2)).

Report Recommendations:

The MRC may consider whether the report to the legislature will recommend a further working-group or project to discuss reporting of child abuse and neglect in institutional settings. Supported 51B reports of child abuse and neglect are provided to certain state licensing agencies and the Office of the Child Advocate but require no additional involvement of DCF. Additional work can also be recommended on the inter-agency collaboration involving reports in institutional settings.

Children who are Non-Caretakers

Instances of problematic sexual behavior or actions by children or involving other children are often screened-out of DCF involvement at the intake phase due to DCF regulations that identify that the definition of abuse or neglect for DCF purposes hinges on the alleged perpetrator being considered a “caretaker.” These cases may trigger mandatory referrals by DCF staff to district attorneys’ offices under DCF policy (including cases of serious physical and sexual abuse). The 2018 criminal justice reform law raised the age of criminal responsibility proceedings from age 7 to age 12. The district attorney’s office will often decline to take any prosecutorial action on these cases due to the age of the child who is the alleged perpetrator and other possible complications of bringing such cases.

Some of these cases are referred to a Child Advocacy Center (CAC) which provides a multidisciplinary team approach to child disclosures of allegations of sexual abuse, physical abuse, and witness to violence. The multidisciplinary team can include medical professionals, mental health professionals, law enforcement, DCF, and attorneys. CACs can be 501(c)(3) organizations (example: Bristol County), they can operate under the umbrella of a prosecutorial office or medical center, and though they can receive state funding, they are not subject to any uniform standards or procedures across the state. There is a National Network of Children’s Advocacy Centers. Due to the variability of CAC models across the state, some CACs will accept cases of child sexual or physical abuse by an alleged child perpetrator and investigate those cases through a SANE interview or other means, and some CACs in the state will not accept such cases. This results in variability of response to these situations depending on geography.

The OCA in collaboration with the Children’s Trust secured funding in the FY20 budget for an 18-month long pilot training program for Massachusetts CACs to address problematic sexual behaviors in children and youth. The pilot program is based on a University of Oklahoma training in Cognitive Behavioral Therapy for problematic sexual behaviors in children.

Other States’ Formulations:

Florida: “Reports involving juvenile sexual abuse or a child who has exhibited inappropriate sexual behavior shall be made and received by the department. An alleged incident of juvenile sexual abuse involving a child who is in the custody of or protective supervision of the department shall be reported to the department’s central abuse hotline.

1. The...hotline shall immediately...transfer the report...to the county sheriff’s office. The department shall conduct an assessment and assist the family in receiving appropriate services...and send a written report of the allegation to the appropriate county sheriff’s office within 48 hours after the initial report is made to the...hotline.

2. The department shall ensure that the facts and results of any investigation of child sexual abuse involving a child in the custody of or under the protective supervision of the department are made known to the court at the next hearing or included in the next report to the court concerning the child.”

Rhode Island: “Any person who has reasonable cause to know or suspect that any child has been abused or neglected...or has been a victim of sexual abuse by another child, shall, within twenty-four (24) hours, transfer that information to the department of children, youth and families or its agent, who shall cause the report to be investigated immediately. As a result of those reports and referrals, protective social services shall be made available to those children in an effort to safeguard and enhance the welfare of those children and to provide a means to prevent further abuse or neglect.”

Report Recommendations:

The MRC may consider whether the report to the legislature will recommend a further working-group or project to discuss standardizing CAC models across the state. Although there is value in a variety of operational models and is value in the flexibility of a model to address local particularities, service provision can vary widely depending on the geographic location of a child or family. This topic is outside of the scope of the MRC and would require thought leadership from entities not on this Commission.

DCF Responses to 51A reports
Referrals/Communication to District Attorneys

the department of children and families’ responses to written reports filed under said section 51A of said chapter 119, including offenses that require a referral to the district attorney

Text in this box is quoted directly from the mass.gov website: <https://www.mass.gov/info-details/actions-dcf-takes-when-child-abuse-or-neglect-is-reported>

DCF screening of child abuse or neglect reports

The purpose of the screening process is to gather sufficient information to determine whether the allegation meets the criteria of suspected abuse or neglect, and whether there is immediate danger to the safety of a child.

Upon receiving a report, **DCF immediately begins to “screen“ the report.** Screening activities include:

- Gathering information from the reporter
- Reviewing any history the child or family may have with DCF or another state’s child protection agency
- Conducting an identity query (if needed)
- Conducting CORI and SORI checks
- Requesting information from local law enforcement
- Contacting other collaterals who may know the family
- Seeking clinical consultation (especially when multiple reports on separate incidents have been filed on any children in a family) and
- searching online and social media sources (if needed)

DCF will determine if there is an immediate concern for child safety, and if a “reportable condition” exists (i.e., there is information that a child may have been abused and/or neglected by a caregiver, or that a child may have been or may be at risk of sexual exploitation or human trafficking).

- Reports that do not meet DCF’s criteria of suspected abuse or neglect are *screened-out*. DCF will send the family a written notification. The mandated reporter will be sent a copy.
- Reports that meet the criteria are *screened-in*.

During screening, **DCF also determines if an emergency or non-emergency response is needed.**

- Emergency responses begin ASAP, and the child is visited within 2 hours.
- Non-emergency responses begin ASAP, and the child is visited within 3 business days.
- DCF completes screening of **non-emergencies in 1 business day** (of the total 15), but may extend screening 1 additional day in limited circumstances.

Relevant current statutory language:

51A(i) “Within 30 days of receiving a report from a mandated reporter, the department shall notify the mandated reporter, in writing, of its determination of the nature, extent and cause or

causes of the injuries to the child and the services that the department intends to provide to the child or the child's family.”

Relevant current statutory language – DA referrals:

51A(e) “A mandated reporter who has reasonable cause to believe that a child has died as a result of any of the conditions listed in subsection (a) shall report the death to the district attorney for the county in which the death occurred and the office of the chief medical examiner as required by clause (16) of section 3 of chapter 38. Any person who fails to file a report under this subsection shall be punished by a fine of not more than \$1,000.”

51(B)(a) “...The department shall immediately report to the district attorney and local law enforcement authorities, a sexually exploited child or child who is otherwise a human trafficking victim, regardless of whether the child is living with a parent, guardian or other caretaker.”

51(B)(k) “The department shall notify and shall transmit copies of substantiated 51A reports and its written evaluations and written determinations...to the district attorney for the county in which the child resides and for the county in which the suspected abuse or neglect occurred, and to the local law enforcement authorities...when the department has reasonable cause to believe that 1 of the conditions listed below resulted from abuse or neglect.

The department shall immediately report to the district attorney and local law enforcement authorities listed above when early evidence indicates there is reasonable cause to believe that 1 of the conditions listed below resulted from abuse or neglect:

- (1) a child has died or has suffered brain damage, loss or substantial impairment of a bodily function or organ, substantial disfigurement, or serious physical injury including, but not limited to, a fracture of any bone, a severe burn, an impairment of any organ or an injury requiring the child to be placed on life-support systems;
- (2) a child has been sexually assaulted...
- (3) a child has been sexually exploited... or is a sexually exploited child or a child who is otherwise a human trafficking victim; or
- (4) any other disclosure of physical abuse involving physical evidence which may be destroyed, any current disclosure by a child of sexual assault, or the presence of physical evidence of sexual assault.

Within 45 days of the notification under the first paragraph, the department shall further notify the district attorney of a service plan, if any, developed for such child and his family.

No provision of chapter 66A, sections 135 to 135B, inclusive, of chapter 112, or sections 51E and 51F of this chapter relating to confidential data or confidential communications shall prohibit the department from making such notifications or from providing to the district attorney or local law enforcement authorities any information obtained under this section. No person providing notification or information to a district attorney or local law enforcement authorities under this section shall be liable in any civil or criminal action by reason of such action. Nothing herein shall be construed to prevent the department from notifying a district attorney relative to

any incident reported to the department under section 51A or to limit the prosecutorial power of a district attorney.”

Policy for Referrals to the District Attorney and Local Law Enforcement Authority

“In addition to...mandatory referrals...the Department may refer to the District Attorney and local law enforcement authority other reports or information that involve serious criminal conduct that affects the safety and well-being of children or that pose a serious threat to public safety generally.

Discretionary referrals may be made at any point in the Department’s involvement with a family and should be made as soon as the Department becomes aware of information warranting a referral.”

Report Recommendations:

The MRC may consider whether the report to the legislature will recommend a further working-group or project to discuss multidisciplinary teams under MGL c. 119 § 51D. Multidisciplinary teams are comprised of DCF caseworkers, a representative of the district attorney, and one other member appointed by the area director. The team’s purpose is to review and monitor the service plan developed by DCF, make recommendations for amendments to the service plan, advise on prosecuting members of the family, and advise on the possibility of utilizing diversionary alternatives. This section of the law is extensive and the practice in this area is complex. This topic is outside of the scope of the MRC and would require thought leadership from entities not on this Commission.